

Rulemaking Hearing Rules
of
Department of Environment and Conservation
Division of Remediation

Chapter 1200-01-13
Hazardous Substance Remedial Action

Amendments

Subparagraph (b) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (b) in its entirety and substituting the following language so that, as amended, the subparagraph (b) shall read as follows:

(b) Generation Fee - Amount and Manner of Assessment

Generators subject to this rule shall pay a fee based on the total amount of hazardous waste generated in the previous calendar year calculated on an as-generated (wet weight) basis in accordance with the below-listed schedule:

1.	Amount of Hazardous Waste Generated in 2007	2008 Fee (\$)
	less than 2,645 lbs (less than 1,200 kg)	\$0
	2,645 – 7,164 lbs (1,200 – 3,249 kg)	\$650.00
	7,165 - 242,506 lbs (3,250 - 109,999 kg)	\$0.090719 per lb (\$.20 per kg)
	242,507 lbs or more (110,000 kg or more)	\$22,000.00
2.	Amount of Hazardous Waste Generated in 2008	2009 Fee (\$)
	less than 2,645 lbs (less than 1,200 kg)	\$0
	2,645 – 7,164 lbs (1,200 – 3,249 kg)	\$715.00
	7,165 – 240,502 lbs (3,250 - 109,090 kg)	\$0.099791 per lb (\$.22 per kg)
	240,503 lbs or more (109,091 kg or more)	\$24,000.00
3.	Amount of Hazardous Waste Generated in 2009	2010 Fee (\$)
	less than 2,645 lbs (less than 1,200 kg)	\$0
	2,645 – 7,210 lbs (1,200 – 3,270 kg)	\$785.00
	7,211 – 238,832 lbs (3,271 - 108,333 kg)	\$0.108863 per lb (\$.24 per kg)
	238,833 lbs or more (108,334 kg or more)	\$26,000.00
4.	Amount of Hazardous Waste Generated in 2010 and each year thereafter	2011 Fee (\$)
	less than 2,645 lbs (less than 1,200 kg)	\$0
	2,645 – 7,334 lbs (1,200 – 3,326 kg)	\$865.00
	7,335 – 237,418 lbs (3,327 - 107,692 kg)	\$0.117935 per lb (\$.26 per kg)
	237,419 lbs or more (107,693 kg or more)	\$28,500.00

Subparagraph (c) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (c) in its entirety and substituting the following language so that, as amended, subparagraph (c) shall read as follows:

(c) Off-Site Shipment Fee

1. Hazardous Waste - Any generator of twelve hundred (1200) kg or greater per year who shipped hazardous waste (excluding hazardous wastewater) off-site for treatment or disposal during the calendar year is hereby assessed an off-site shipping fee in accordance with the following schedule:

(i)	Amount of Hazardous Waste Shipped in 2007	2008 Fee (\$) \$.0154322 per kg (\$14.00 per ton)
(ii)	Amount of Hazardous Waste Shipped in 2008	2009 Fee (\$) \$.0176368 per kg (\$16.00 per ton)
(iii)	Amount of Hazardous Waste Shipped in 2009	2010 Fee (\$) \$.0187391 per kg (\$17.00 per ton)
(iv)	Amount of Hazardous Waste Shipped in 2010 and each year thereafter	2011 Fee (\$) \$.0209437 per kg (\$19.00 per ton)

For purposes of assessing this fee, any hazardous waste, excluding hazardous wastewater, which was shipped off-site, shall be considered to have been shipped off-site for treatment or disposal.

2. Hazardous Wastewater - Any generator of twelve hundred (1200) kg or greater per year who shipped "hazardous wastewater", per T.C.A. § 68-212-203, off-site for treatment and disposal during the calendar year shall pay an off-site shipping fee in accordance with the following schedule:

(i)	Amount of Hazardous Wastewater Shipped in 2007	2008 Fee (\$) \$.0077161 per kg (\$7.00 per ton)
(ii)	Amount of Hazardous Wastewater Shipped in 2008	2009 Fee (\$) \$.0088184 per kg (\$8.00 per ton)
(iii)	Amount of Hazardous Wastewater Shipped in 2009	2010 Fee (\$) \$.00936955 per kg (\$8.50 per ton)
(iv)	Amount of Hazardous Wastewater Shipped in 2010 and each year thereafter	2011 Fee (\$) \$.01047185 per kg (\$9.50 per ton)

3. Out-of-state generators who treat or dispose of hazardous wastes at any commercial facility located in Tennessee shall be subject to the off-site shipping fees levied by parts 1 and 2 of this subparagraph.

- (i) The commercial facility to which the waste is shipped for treatment or disposal shall be responsible for collecting the off-site shipping fee and remitting it to the State by June 15th of each year.

- (ii) For the purposes of compensating the commercial facility in accounting for and remitting this fee, the commercial facility shall be allowed a deduction of two percent (2%) of the total amount due the State. No deduction shall be allowed if any portion of the payment is delinquent.
 - (iii) Commercial facilities shall collect off-site shipping fees from out-of-state generators beginning July 1, 1994.
 - (iv) Any out-of-state generator desiring to claim that they generated less than 1200 kg of hazardous wastes per year and that they are therefore excluded from payment of this fee or to claim that they have previously paid the maximum fee in accordance with part 4 of this subparagraph, shall so certify to all receiving Tennessee facilities.
4. The maximum annual off-site shipping fee levied by parts 1, 2, and 3 of this subparagraph due from any single generator shall be fifty thousand dollars (\$50,000) for waste shipped in 2008; fifty-five thousand dollars (\$55,000) for waste shipped in 2009; sixty-two thousand dollars (\$62,000) for waste shipped in 2010; and sixty-five thousand dollars (\$65,000) for waste shipped in 2011, and each year thereafter.

Subparagraph (f) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (f) in its entirety and substituting the following language so that, as amended, subparagraph (f) shall read as follows:

(f) Due Date of Fees, Reporting Requirements

- 1. All remedial action fees from in-state generators shall be paid to the Department on or before June 15th of each year.
- 2. Commercial facilities collecting off-site shipping fees from out-of-state generators shall pay such fees to the Department on or before June 15th of each year.
- 3. Transporters issued a transporter permit for any year prior to 1995 shall pay the assessed fee on or before the October 15th that immediately follows the issuance of the permit, if the fee was not paid upon issuance.
- 4. Hazardous waste transporters renewing permits shall pay the fee assessed by subparagraph (e) of this paragraph at the time the permit is issued.
- 5. If any part of any fee imposed pursuant to T.C.A. § 68-212-201 et seq. is not paid on or before the due date, the person or persons failing to pay such fee shall be subject to the following:
 - (i) The assessment of interest in an amount equal to that allowed in T.C.A. § 47-14-103(3); and/or
 - (ii) A civil penalty not to exceed ten thousand dollars (\$10,000) for each day of violation or an amount equal to 5 percent (5%) per month of any unpaid balance, whichever is less.
- 6. The Remedial Action Fee Report and supporting documentation consisting of copies of the Hazardous Waste Stream Reports and Off-Site Shipping Reports must be submitted to the department by generators of hazardous waste and hazardous waste waters by March 1st of each year.

- (i) Supporting documentation must be returned by all persons that generated and/or shipped 1200 kg or more of hazardous waste or hazardous wastewaters in the prior calendar year.
- (ii) Any person generating and/or shipping 1200 kg or more of hazardous waste or hazardous wastewaters who fails to submit the Remedial Action Fee Report and supporting documentation by April 1st of each year shall be subject to the assessment of a civil penalty of not less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00) per day.

Authority: T.C.A. §§4-5-201 et. seq., 68-212-203, 68-212-206(e), 68-212-207, and 68-212-215(e)

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 28th day of July, and will be come effective on the 11th day of October, 2008. (07-11-08; DBID 2924)

Economic Impact Statement

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

This proposed rule impacts persons who annually generate and/or shipped off-site more than 1200 kilograms of hazardous waste. There are about 913 small businesses (less than 50 employees) on the Division of Solid/Hazardous Waste Management's database. 566 of the 913 are Conditionally Exempt Small Quantity generators (CESQG) that are not subject to the remedial action fees. Of the remaining 347 businesses only 59 paid remedial action fees for reporting year 2006. Therefore, approximately only 59 small businesses in Tennessee will be impacted by this proposed rule.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

This proposed rule increases the amount of fee to be paid each year by hazardous waste generators and persons who ship hazardous waste off-site for treatment or disposal and it changes the due date for payment of that fee from March 1st of each year to June 15th of each year. Therefore, this proposed rule does not add any additional reporting, recordkeeping, or other administrative cost that does not already exist.

- (3) A statement of the probable effect on impacted small businesses and consumers:

The vast majority (93.5%) of small businesses are exempt from fees so the probable effect on impacted small businesses and consumers is negligible.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The rule changes do not alter reporting requirements, recordkeeping or other administrative costs required for compliance with the proposed rule. The only alternative to this fee increase is an increase in the state appropriation to the Hazardous Waste Remedial Action Fund. The Remedial Action Fee revenue is down by more than 50% compared to the amount collected in the mid 1990's. In addition the buying power of the reduced revenue has declined by approximately 40%. The state currently allocates approximately \$1,000,000 annually to the Hazardous Waste Remedial Action Fund.

- (5) A comparison of the proposed rule with any federal or state counterparts:

These Rules are specific to Part 2 of the Hazardous Waste Management Act, T.C.A. § 68-212-201 et seq.

Federal - The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) established the Hazardous Substance Superfund Trust Fund (Trust Fund) to finance response actions in cases in which a liable party cannot be found or is incapable of paying cleanup costs. The Trust Fund was principally financed by three excise taxes on oil and chemicals and an environmental tax on corporate taxable income. The original three excise taxes were a per barrel tax on refinery crude oil and imported petroleum products; a per ton tax imposed on designated chemicals; and a per ton tax on imported substances that contain or were derived from any of the feedstock chemicals listed. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under SARA, the petroleum tax was increased 10-fold. A new tax was also imposed on the corporate minimum taxable income. Collectively these taxes generated approximately \$1.5 billion annually for the Trust Fund. These taxes expired in December 1995 and have not been reauthorized.

State – State's fund their Superfund programs through various means including corporate business taxes, bonds, spill tax, generator fees, permit fees, annual fees, cost recovery, tipping/disposal fees, transporter fees, gas tax and state appropriations

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from paying the increased fee will result in the Division being unable to adequately address site cleanup and related Division expenses or result in a larger increase being imposed on the remaining businesses.